



General Assembly

January Session, 2013

## ***Amendment***

LCO No. 7658

**\*HB0669407658HDO\***

Offered by:

REP. GODFREY, 110<sup>th</sup> Dist.

REP. SMITH, 108<sup>th</sup> Dist.

SEN. MUSTO, 22<sup>nd</sup> Dist.

SEN. KELLY, 21<sup>st</sup> Dist.

To: Subst. House Bill No. **6694**

File No. 740

Cal. No. 519

### ***"AN ACT CONCERNING THE INHERITANCE RIGHTS OF A CHILD WHO IS BORN AFTER THE DEATH OF A MARRIED PARENT."***

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2013*) (a) For purposes of  
4 determining rights to property to be distributed upon the death of a  
5 decedent, a child of the decedent conceived and born after the death of  
6 the decedent shall be deemed to have been born in the lifetime of the  
7 decedent and after the execution of all of the decedent's testamentary  
8 instruments, if:

9 (1) The decedent executed a written document that: (A) Specifically  
10 set forth that his sperm or her eggs may be used for the posthumous  
11 conception of a child, (B) specifically provided his or her spouse with  
12 authority to exercise custody, control and use of the sperm or eggs in

13 the event of his or her death, and (C) was signed and dated by the  
14 decedent and the surviving spouse; and

15 (2) The child posthumously conceived using the decedent's sperm  
16 or eggs was in utero not later than one year after the date of death of  
17 the decedent spouse.

18 (b) The surviving spouse of a decedent who has executed a  
19 document described in subsection (a) of this section shall provide a  
20 copy of such document to (1) the fiduciary of the decedent's estate, if a  
21 Probate Court has admitted the decedent's will to probate or granted  
22 administration of the decedent's estate, or (2) to the person filing an  
23 affidavit or statement in lieu of administration, if the estate is being  
24 settled under section 45a-273 of the general statutes, not later than  
25 thirty days after the date of the decedent's death, appointment of a first  
26 fiduciary, or filing of an affidavit or statement in lieu of administration,  
27 whichever is latest. Not later than thirty days after the date of receipt  
28 of such document, the fiduciary of the decedent's estate or person  
29 filing an affidavit or statement in lieu of administration shall provide  
30 written notification of the existence of such document to the court. In  
31 the absence of being in possession of a document described in  
32 subsection (a) of this section, if the fiduciary of the decedent's estate or  
33 person filing an affidavit or statement in lieu of administration has  
34 actual knowledge that the decedent, during his or her lifetime,  
35 preserved sperm or eggs, or executed a document described in  
36 subsection (a) of this section, such fiduciary or person shall provide  
37 written notification to the court. The failure of a surviving spouse,  
38 fiduciary or person filing an affidavit or statement in lieu of  
39 administration to comply with the notice requirements prescribed in  
40 this subsection shall not impair a child's right to property under  
41 subsection (a) of this section.

42 (c) Except as provided in section 4 of this act, the Probate Court  
43 having jurisdiction of the estate of the decedent, or if no probate  
44 proceedings have been commenced, the Probate Court for the district  
45 in which the decedent was domiciled at the time of death, shall have  
46 jurisdiction over any dispute relating to the rights to property of a

47 child conceived and born after the death of a decedent, whether or not  
48 the property is part of the probate estate. A child or person acting on  
49 behalf of a child who claims rights to the property of a decedent under  
50 subsection (a) of this section shall prove such claim by clear and  
51 convincing evidence.

52 Sec. 2. Section 45a-262 of the general statutes is repealed and the  
53 following is substituted in lieu thereof (*Effective October 1, 2013*):

54 (a) The words "child", "children", "issue", "descendants",  
55 "descendant", "heirs", "heir", "unlawful heirs", "grandchild" and  
56 "grandchildren", when used in the singular or plural in any will or  
57 trust instrument, shall, unless such document clearly indicates a  
58 contrary intention, be deemed to include children born as a result of  
59 A.I.D. The provisions of this [section] subsection shall apply to wills  
60 and trust instruments whether or not executed before, on or after  
61 October 1, 1975, unless the instrument indicates an intent to the  
62 contrary.

63 (b) The words "child", "children", "issue", "descendants",  
64 "descendant", "heirs", "heir", "unlawful heirs", "grandchild" and  
65 "grandchildren", when used in the singular or plural in any will or  
66 trust instrument, shall, unless such document clearly indicates a  
67 contrary intention, be deemed to include children born after the death  
68 of the decedent, as provided in subsection (a) of section 1 of this act.  
69 The provisions of this subsection shall apply to wills and trust  
70 instruments whether or not executed before, on or after October 1,  
71 2013, unless the instrument indicates an intent to the contrary.

72 Sec. 3. (NEW) (*Effective October 1, 2013*) No fiduciary shall be  
73 personally chargeable for any assets that a fiduciary may have  
74 distributed to any beneficiary or heir when it is determined after the  
75 fiduciary made distributions that a child born after the death of the  
76 decedent, as provided in subsection (a) of section 1 of this act, is  
77 entitled to property from the estate, unless: (1) In accordance with the  
78 requirements of subsection (b) of section 1 of this act, the surviving  
79 spouse of the decedent provided the fiduciary with a copy of a

80 document executed by the decedent in accordance with the  
81 requirements of subsection (a) of section 1 of this act, (2) the fiduciary  
82 had actual knowledge at the time of the distributions that the  
83 decedent, during his or her lifetime, preserved sperm or eggs or  
84 executed a document described in subsection (a) of section 1 of this act,  
85 or (3) not later than one hundred fifty days after the date of the  
86 appointment of the first fiduciary, a person acting on behalf of the  
87 child provided written notice to the fiduciary that a child meeting the  
88 requirements of subsection (a) of section 1 of this act has been or may  
89 be conceived.

90 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) Following final  
91 distribution of all assets known to a fiduciary, if an action is brought in  
92 the Superior Court by a child or on behalf of a child claiming rights to  
93 property under subsection (a) of section 1 of this act, a beneficiary shall  
94 be liable, in such action brought by or on behalf of such child, to the  
95 extent of the fair market value on the date of distribution of any assets  
96 received by such beneficiary from the estate of a decedent, for the  
97 property to which the child is entitled and which has not previously  
98 been recovered out of assets held by the fiduciary or from any other  
99 source described in subsection (b) of this section. For purposes of this  
100 section, the date of distribution of real estate specifically devised and  
101 real estate passing under the laws of descent and distribution shall be  
102 the date of the decedent's death.

103 (b) No liability may be imposed upon any such beneficiary under  
104 subsection (a) of this section, unless the plaintiff establishes to the  
105 court that the obligation to the plaintiff cannot be fully satisfied: (1)  
106 Because there are insufficient assets available for such purpose in the  
107 hands of the fiduciary; and (2) by action against persons prior in  
108 liability to the beneficiary under subsections (a), (b) and (c) of section  
109 45a-369 of the general statutes, because such persons are insolvent or  
110 for any other reason, other than not being amenable to suit in this state,  
111 cannot be made to answer for their liabilities.

112 Sec. 5. (NEW) (*Effective October 1, 2013*) The maximum liability to  
113 which a beneficiary is subject under subsection (a) of section 4 of this

114 act is the beneficiary's ratable obligation, in the proportion that the  
115 value of the assets passing to the beneficiary bears to the value of all  
116 such assets passing to beneficiaries within the same order of liability as  
117 the beneficiary under subsection (a) of section 45a-369 of the general  
118 statutes, and no judgment may be had or entered in favor of any  
119 plaintiff against any such beneficiary for more than such ratable  
120 obligation.

121 Sec. 6. Subsection (a) of section 45a-257b of the general statutes is  
122 repealed and the following is substituted in lieu thereof (*Effective*  
123 *October 1, 2013*):

124 (a) Except as provided in subsection (b) of this section, if a testator  
125 fails to provide in the testator's will for any of the testator's children  
126 born or adopted after the execution of the will, including any child  
127 who is born as a result of artificial insemination to which the testator  
128 has consented in accordance with subsection (b) of section 45a-772 and  
129 any child born after the death of the testator as provided in subsection  
130 (a) of section 1 of this act, the omitted after-born or after-adopted child  
131 receives a share in the estate as follows:

132 (1) If the testator had no child living when the testator executed the  
133 will, an omitted after-born or after-adopted child receives a share in  
134 the estate equal in value to that which the child would have received  
135 had the testator died intestate, unless the will devised or bequeathed  
136 all or substantially all of the estate to the other parent of the omitted  
137 child and that other parent survives the testator and is entitled to take  
138 under the will.

139 (2) If the testator had one or more children living when the testator  
140 executed the will, and the will devised or bequeathed property or an  
141 interest in property to one or more of the then-living children, an  
142 omitted after-born or after-adopted child is entitled to share in the  
143 testator's estate as follows:

144 (A) Except as provided in subparagraph (E) of this subdivision, the  
145 portion of the testator's estate in which the omitted after-born or after-

146 adopted child is entitled to share is limited to devises and legacies  
147 made to the testator's then-living children under the will.

148 (B) The omitted after-born or after-adopted child is entitled to  
149 receive the share of the testator's estate, as limited in subparagraph (A)  
150 of this subdivision, that the child would have received had the testator  
151 included all omitted after-born and after-adopted children with the  
152 children to whom devises and legacies were made under the will and  
153 had given an equal share of the estate to each child.

154 (C) To the extent feasible, the interest granted an omitted after-born  
155 or after-adopted child under this section must be of the same character,  
156 whether equitable or legal, present or future, as that devised or  
157 bequeathed to the testator's then-living children under the will.

158 (D) In satisfying a share provided by this subdivision, devises and  
159 legacies to the testator's children who were living when the will was  
160 executed abate ratably. In the abatement of the devises and legacies of  
161 the then-living children, to the maximum extent possible the character  
162 of the testamentary plan adopted by the testator shall be preserved.

163 (E) If it appears from the will that the intention of the testator was to  
164 make a limited provision which specifically applied only to the  
165 testator's living children at the time the will was executed, the after-  
166 born or after-adopted child succeeds to the portion of such testator's  
167 estate as would have passed to such child had the testator died  
168 intestate.

169 Sec. 7. Subsection (a) of section 45a-438 of the general statutes is  
170 repealed and the following is substituted in lieu thereof (*Effective*  
171 *October 1, 2013*):

172 (a) After distribution has been made of the intestate estate to the  
173 surviving spouse in accordance with section 45a-437, all the residue of  
174 the real and personal estate shall be distributed in equal proportions,  
175 according to its value at the time of distribution, among the children,  
176 including children born after the death of the decedent, as provided in

177 subsection (a) of section 1 of this act, and the legal representatives of  
178 any of them who may be dead, except that children or other  
179 descendants who receive estate by advancement of the intestate in the  
180 intestate's lifetime shall themselves or their representatives have only  
181 so much of the estate as will, together with such advancement, make  
182 their share equal to what they would have been entitled to receive had  
183 no such advancement been made.

184 Sec. 8. Section 45a-368 of the general statutes is repealed and the  
185 following is substituted in lieu thereof (*Effective October 1, 2013*):

186 (a) Subject to the provisions of sections 45a-369 to 45a-375, inclusive,  
187 a beneficiary is liable, in an action or actions brought in the Superior  
188 Court, to the extent of the fair market value on the date of distribution  
189 of any assets received by [him as a] such beneficiary from the estate of  
190 a decedent, for the expenses of administering the estate, claims, funeral  
191 expenses of the decedent [,] and all taxes for which the estate is liable,  
192 which have not previously been recovered out of assets held by the  
193 fiduciary or from any other source described in subsection (b) of this  
194 section. [or in section 45a-409.] For purposes of this section, the date of  
195 distribution of real estate specifically devised and real estate passing  
196 under the laws of descent and distribution shall be the date of the  
197 decedent's death.

198 (b) No liability may be imposed upon any such beneficiary under  
199 subsection (a) of this section, unless the plaintiff establishes  
200 [satisfactorily] to the court that the obligation to [him] the plaintiff  
201 cannot be fully satisfied: (1) Because there are insufficient assets  
202 available for such purpose in the hands of the fiduciary; (2) by action  
203 against persons prior in liability to the [defendant] beneficiary under  
204 subsections (a), (b) and (c) of section 45a-369, because such persons are  
205 insolvent or for any other reason, other than not being amenable to suit  
206 in this state, cannot be made to answer for their liabilities; and (3) by  
207 the enforcement, under section 45a-266, of any lien, security interest or  
208 other charge he holds against assets of the decedent specifically  
209 disposed of by will or passing to a distributee, or against the proceeds  
210 of any policy of insurance on the life of the decedent payable to a

211 named beneficiary."

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|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                        |             |
| Section 1   | <i>October 1, 2013</i> | New section |
| Sec. 2  | <i>October 1, 2013</i> | 45a-262     |
| Sec. 3  | <i>October 1, 2013</i> | New section |
| Sec. 4  | <i>October 1, 2013</i> | New section |
| Sec. 5  | <i>October 1, 2013</i> | New section |
| Sec. 6  | <i>October 1, 2013</i> | 45a-257b(a) |
| Sec. 7  | <i>October 1, 2013</i> | 45a-438(a)  |
| Sec. 8  | <i>October 1, 2013</i> | 45a-368     |